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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/004,664 | 12/03/2001 | Michael Wayne Brown | AUS920010947US1 | 9674 |

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| EXAMINER | |
|---|---|
| UBILES, MARIE C | |
| **ART UNIT** | **PAPER NUMBER** |
| 2642 | 6 |

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/004,664 | BROWN ET AL. | |
| | Examiner | Art Unit | |
| | Marie C. Ubiles | 2642 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *03 December 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-57* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-57* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3, 6, 8-9, 11, 13, 16, 18-19, 21, 23-24, 26-27, 29, 39, 41, 51, 53 and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (WO 98/35507).

As for claim 1, Walker et al. discloses a PBX/ACD system that allows callers to exercise control over their rank within a phone queue (i.e. a method for caller position adjustment within a calling queue)(*See Summary of the Invention, Page 3, lines 33-35*), an IVRU is employed to offer a caller a chance to move up in the queue in return for a payment or advancement token (i.e. detecting an advancement token earned by a caller at a calling queue)(*See Summary of the Invention, Page 3, lines 38-40*), the caller

responds by entering a credit card number, an account number, or some other method of payment and the ACD then changes the rank order of the caller's call within the phone queue and alters the rank position of other calls within the queue (i.e. responsive to a redemption value of said advancement token, adjusting a position of said caller within said calling queue, such that caller is allowed control over said position within said calling queue)( *See Summary of the Invention, Page 4, lines 1-6*).

As for claim 3, the caller responds by entering a credit card number, an account number, or some other method of payment and the ACD then changes the rank order of the caller's call within the phone queue and alters the rank position of other calls within the queue (i.e. detecting said advancement token from a token advancement system communicatively connected to said calling queue)(*See Summary of the Invention, Page 4, lines 1-6*).

Claims 6, 13, 16, 23, 24, 39, 51 and 57 are rejected for the same reasons as claim 3.

Claims 9, 11, 19, 21, 27, 29, 41 and 53 are rejected for the same reasons as claim 1.

Claims 8, 18 and 26 read, for example, on a credit given to a caller's charge card or "account number" (i.e. promotion system)(*See Summary, page 4, line 2-3*). It is well known, that various companies allow a customer to ask for a credit refund, if for example, the customer (i.e. caller) is not satisfied with the service (i.e. did not move up as expected, waited a longer time, etc).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 7, 17, 25, 40 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US 6,178,240).

Walker et al. ('507) disclose the system as claimed except for detecting when said caller is next in line to be answered within said calling queue; and transferring a next in line notification to said caller at a token advancement system.

Walker et al. ('240) teach, "The PBX/ACD monitors the queue and determines when the call is ready to be handled by the next available attendant. Once an attendant

is available to handle the call, a disconnect warning is preferably played to the caller, and the caller can choose when to have the call transferred to the appropriate attendant console..." (*See Summary, Col. 3, lines 29-35*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify Walker's et al. system ('507) by adding a disconnect announcement when the call is ready to be handled by a next available attendant; and thus in this manner allow the caller with means to decide if he or she wants the call transferred to the aforementioned attendant or wish to continue interacting with other on-hold services.

5. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US 6,178,240).

As for claim 4, it can be seen that Walker et al. ('240) lacks the step of receiving a call from a telephone switching system, wherein said call is waiting until a representative is available; adding said call to said calling queue, wherein said calling queue controls an order in which said call is transferred to said representative; enabling said caller associated with said call to select from a plurality of services available to said caller while waiting for said representative; and connecting said call to a particular service selected by caller from among said plurality of services.

Walker ('240) teaches, "A system for entertaining a caller placed in a queue of a call center is disclosed that allows the caller to access a plurality of entertainment options while on hold. The entertainment options permit the caller to (i) place a call to a third party while on hold; or (ii) access one or more premium entertainment services while on hold. A PBX/ACD receives the calls destined for the call center, and queues the calls when an appropriate attendant is not available. An IVRU prompts a caller for specific information and forwards the collected information to the PBX/ACD. The IVRU provides the caller with a menu of available entertainment options which can be accessed by the caller while the caller is on hold. The PBX/ACD establishes a connection between the caller and the selected entertainment service. The call is then transferred to an available attendant with any data that may be required to process the call." (*See Abstract*).

It would have been obvious to one of ordinary skill in the arte at the time the invention was made, to modify Walker et al. ('507) system by adding a plurality of entertainment options (i.e. plurality of services) that the caller can access while placed on a queue as taught by Walker ('240), and thus in this manner maintain the customer entertained while waiting for its call to be answered by an attendant.

Claim 14 is rejected for the same reasons as claim 4.

6. Claims 10, 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507).

It would have been obvious to one of ordinary skill in the art that Walker's et al. system would advance the call a particular amount of time within the call queue once the caller advances a particular number of position within said calling queue, as queue positioning and expected wait time are intrinsically related.

7. Claims 2, 12, 22, 31-32, 34-38, 43-44, 46-50 and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Philonenko (US 2002/0131399).

As for claim 2, Walker et al. disclose the system as claimed except for the caller earning advancement on calling queue based on caller's participation on a survey.

Philonenko teaches, "...if the client is willing to take a certain survey, or agrees to participate in a study, or perhaps agrees to listen to specific advertising during the same contact period then his or her queue position can be advanced even more." (*See Description, P. 0150, lines 9-13*).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Walker's et al. system by allowing the caller to advance his or her position in a queue if the caller is willing to take a survey, as taught by Philonenko, and thus in this manner allow the customer to move up in the queue without having to make a monetary contribution.

Claims 12, 22, 34-36, 46-48 and 55 are rejected for the same reasons as claim 2.

As for claim 31, Walker et al. disclose the system as claimed except for enabling the caller to participate in a competition for adjustment of position within said hold queue, monitoring the results of said competition, wherein said result comprises whether said caller wins said competition and wherein competitors are from among a general audience of callers.

Philonenko teaches, "In one embodiment of the present invention, communication channels with each client on queue can be established so that clients may actually bid against each other for a better queue position in a true sense of auctioneering."

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Walker's et al. system by adding the bidding competition; and thus in this manner allow the client (i.e. caller) to move the winning caller to move up the queue list.

Claims 32, 43-44 and 54 are rejected for the same reasons as claim 31.

As for claims 37-38, Walker et al. disclose the system as claimed except for enabling caller to designate a portion of a membership account value to be applied to an adjustment of said position of said call; monitoring said result of said designation, wherein said result comprises an adjustment redemption for said portion of said membership account value; and enabling said caller to add to said membership account value by participating in promotional activities at a time at least one from among before said call is placed and after said call is placed.

Philonenko teaches, "...clients are prioritized according to whether or not they will register with or become members of a service organization...if the client is willing...to listen to specific advertising during the same contact period then his or her queue position can be advanced even more."

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Walker's et al system by adding means to prioritize the call based on the client (i.e. caller) becoming member of an organization or listening to advertisement (i.e. promotional activities); and thus in this manner allow the caller to move up in the queue.

In reference to the membership account value, using a portion of this membership account value to move up the queue and adding value to membership account by participating on promotional offers; reads for example on member's club cards given by drugstores and supermarkets. The member can add value to his or her card by buying specified products as marked down on a shopper (or online) and later redeem the gained value. While this is not directly related to calls on queue, it would have been obvious to one of ordinary skill to apply the same "member's club card" concept to the claimed invention.

Claims 49-50 and 56 are rejected for the same reasons as claims 37-38.

8. Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US 6,178,240) as applied to claims 4 and 14, and further in view of Philonenko (US 2002/0131399).

The same teachings and reasons for combination as those applied to claim 31 apply to claims 5 and 15.

9. Claims 30 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Johnson et al. (US 2002/0196927).

Walker et al. disclose the system as claimed except for receiving said at least one call transferred from said call hold queue from among a plurality of independent call hold queues each representative of one from among a plurality of vendors.

Johnson et al. teach, "The Controller can link several ACDs to a single call and manage the hand-offs based on the caller's input and the individual ACD response. The appropriate ACD can be one of several ACDs of one customer, such as United Airlines, and/or for selecting an ACD among ACDs for a plurality of customers, (e.g., Hilton Hotel Company, United Airlines, Avis Car Rental)." (*See Summary, P. 007*).

It would have been obvious to one of ordinary skill in the art at the time of the invention, to modify Walker's et al. system by adding a controller that can select an ACD from among a plurality of companies, such as Hilton Hotel, United and Avis, as taught by Johnson et al; and thus in this manner allow the call to the transferred to the appropriate attendant, based on the caller's input.

10. Claims 33 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Philonenko (US 2002/0131399), as applied to claims 31-32, 43-44 and 54, and further in view of Farfan (US 5,828,735).

The combination of Walker et al. and Philonenko teaches the system as claimed, except for enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, a random luck game, logic game, and a word game.

Farfan teaches, "...an on-hold service that provides the person placed on hold with the ability to engage in a game activity while on-hold, rather than suffer the discontent associated with being placed on hold and having nothing to do..." (*See background, Col. 1, lines 36-40*). The system taught by Farfan uses "bet on a card" game software (*See Description, Col. 5, lines 25-26*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the combination of Walker et al. and Philonenko by adding a card software game, as taught by Farfan; and thus in this manner provide the caller with the ability to engage in a game activity while on hold, rather than suffer the discontent associated with being placed on hold and having nothing to do.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marie C. Ubiles whose telephone number is (703) 305-0684. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marie C. Ubiles
May 15, 2004.

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